



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

NO PROTEST RECEIVED
Release copies to District
Date [REDACTED]
Surname [REDACTED]

Date: MAR 23 2001

Contact Person: [REDACTED]

ID Number: [REDACTED]

Telephone Number: [REDACTED]

FAX Number: [REDACTED]

Dear Applicant:

This letter responds to your application for recognition of exemption as an organization described in section 501(c)(3) of the Internal Revenue Code.

You were established as a not for profit, public benefit corporation pursuant to the Nonprofit Corporation Act of [REDACTED] on [REDACTED]. Your stated purpose is to operate exclusively for purposes within the meaning of section 501(c)(3) of the Internal Revenue Code and your assets are dedicated to charitable purposes in the event of dissolution of the corporation. Your incorporators are [REDACTED] and [REDACTED].

In your original application you indicated that 100% of your activities would be devoted "...to provid(ing) financil (sic) assistance to individuals that (sic) are purchasing their principal residence. The individuals purchasing the principal residence will be in the low or moderate income level." Your description of your activities further states that this activity "...will be conducted by [REDACTED], and [REDACTED] (sic) who will be the initial officers of the not for profit corporation." You also state you will be supported by fund raising and by charitable contributions. You indicate in your initial application that your three officers will not be compensated. You further indicate you are not a private foundation because you are described in Section 509(a)(1) of the Code. Although you indicate you expect support primarily from fund raising and contributions, the budgets submitted indicate you will be supported by "other" income, with the source not delineated on the required schedule, and that your expenses, aside from contributions, gifts and grants, would be for salaries and wages and office expenses.

Based upon the above information, by letter dated [REDACTED] you were asked to supply additional information which will be summarized below, along with your responses.

[REDACTED]

1. First, it was noted that persons of moderate income were not considered members of a charitable class. Therefore you were asked to clarify your criteria for those to whom you intend to render assistance. In response, you stated:

"The organization will select only applications that meet the requirements of an FHA loan. Furthermore, the applicants must demonstrate by providing financial information that they do not have the money to make the required down payment. Under FHA guidelines, a down payment of 3% of the purchase price is required to obtain the loan. The applicants must have sufficient income level to obtain a loan for the balance of the purchase price."

2. Next, you were asked to explain how the sale of homes would further an exempt purpose. You responded:

"The assisted down payment money shall be an amount not more than three percent of the sales price. The three percent number is used because FHA will loan 97% of the sales price. FHA permits related individuals and charitable organizations to make a gift to the Borrower (sic) to purchase a principal residence without disqualifying the Buyer (sic).

3. Thirdly, you were requested to restructure your board of directors so that control over your activities would be in the hands of disinterested parties. You provided a list of five additional persons named to your board, along with signed statements for each individual acknowledging their commitment to serve in that capacity.

4. Fourthly, you were asked about compensation and how it would be determined. You responded:

"The initial officers [REDACTED], [REDACTED], and [REDACTED] will be actively working in the organization. Initially, there will not be any compensation paid to these officers. However, as the organization grows and becomes financially stable, compensation will be provided to these individuals that will be customary and ordinary to like organizations. Payments made to these individuals will be approved by the Board. The qualifications of these individuals is that all of them are active in the housing market as lawyers or lenders."

In addition to the above, you supplied revised information pertaining to your projected finances which indicates your expectation that all of your funds would be derived from gifts, grants and contributions. You further indicate an expectation that you would use fund raising activities to get companies associated with the construction business to contribute money to you. You also provided a statement, signed by [REDACTED], the your "...assisted down payment program will be used for only low income housing. Low income housing shall be based on the FHA guidelines."

Based upon the information summarized above, in a letter dated [REDACTED] you were advised that Revenue Procedure 90-27, 1990-1 C.B. 518, requires a description of proposed activities that is sufficiently detailed to permit a conclusion that the requirements of the section under which exemption is claimed will be clearly met before exemption will be recognized. You were also asked in that letter to supply additional information which is summarized below, along with your response.

1. You were asked to state whether you expected to derive funds from sellers of homes participating in your program and, if so, to provide description of how the amount of such funding would

be determined. You were also asked what would motivate a home seller to provide this support to you. Your response state:

"Some of the funds for the down payment Assistance (sic) program will be derived from the Sellers (sic) of Homes (sic) participating in the program....as to why a home Seller (sic) would provide that support, I would counter that it could be for multiple purposes. However, I believe that the overriding purpose that a person would make a gift to a charitable organization would be to benefit a charitable cause."

2. In view of your original statement that your receipts would be derived from "other" income, later revised to indicate your expectation of receiving funds from gift, grants and contributions, you were asked to identify your potential contributors and provide any documentation to support your statement. Your replied as follows:

"The potential contributors would include [REDACTED] (such as [REDACTED] etc.) the entity would target industries that were in the homebuilder industries (sic). I would presume that lots of companies and individuals like to contribute to a cause that is in a related field. I am confident that a lot of educators contribute funds to their university and have a charitable intent. Although, it could be argued that since they are contributing to the university that they are employed by, that contribution benefits them. I do not believe that if a seller, builder, or anybody else that is associated with the building industry makes a contribution to the charitable entity that it does not have a charitable purpose."

3. We noted your proposed budget contains significant sums for fund raising expenses. You were asked to describe the type of services you expected to obtain for these expenditures, to identify any individuals you expected to pay these sums to. Your replied:

"Since we are trying to obtain funds from national builders and national companies that are involved in the home building industry, I feel that there will be substantial travel to meet with these people explain the program and to be able to get them involved in the entity."

4. You were asked to provide a copy of the FHA guidelines you referred to as the basis for determining "low income housing" referred to in your "Statement of Officer" discussed above. You replied you "...would amend (your) application to delete the FHA guideline requirement and replace it with a guideline that would meet the 80% of median income as described by HUD."

Section 501(a) of the Internal Revenue Code of 1986 provides for the exemption from federal income tax for organizations described in Section 501(c)(3). Such organizations are recognized as exempt if they are organized and operated exclusively for religious, charitable, and educational purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An

organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(2) of the regulations defines the term "charitable" as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term "charitable" also includes the lessening of the burdens of government.

Section 1.501(c)(3)-1(e) of the regulations provides that an organization may meet the requirements of section 501(c)(3) if it operates a trade or business that is in furtherance of its exempt purposes but not if it is operated for the primary purpose of carrying on an unrelated trade of business as defined in section 513 of the Code.

Revenue Procedure 90-27, 1990-1 C.B. 514 sets forth procedures with regard to applications for recognition of exemption from federal income tax under sections 501 and 521 of the Internal Revenue Code.

Section 5.02 of Rev. Proc. 90-27 provides that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued. In those cases where an organization is unable to describe fully its purposes and activities, a refusal to issue a ruling or determination letter will be considered an initial adverse determination from which administrative appeal or protest rights will be afforded.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In United States v. Wells Fargo Bank, 485 U.S. 351, 108 S. Ct. 1179, 99 L. Ed. 2d 368 (1900) the Supreme Court held that an organization must prove unambiguously that it qualifies for a tax exemption.

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), the court held that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

We have repeatedly attempted to obtain from you the detailed information needed to satisfy the above cited statutes, rulings, procedures and cases dealing with qualification under section 501(c)(3) of the Code. You have been asked for specific information about your assistance to home buyers, about fees you expect to derive from home sellers, about compensation you expect to provide to your officers and/or directors, and for documents to support representations you have made. Without the detailed information we have requested we are unable to determine, for example, whether sums you derive from sellers of homes is a contribution, or whether there are services to the home seller which could change the nature of this income into sums derived from an unrelated trade or business. Similarly, you have

stated an expectation that you will pay compensation to your initial officers and directors. But despite questions about this expectation, we are unable to ascertain whether this is one of the intended results of your organization and operations.

Based on the above, we have concluded you have failed to establish that you will be operated exclusively for charitable purposes. You are therefore not described in Section 501(c)(3) of the Code and are not exempt from federal income taxes by reason of Section 501(a) of the Code.

You are required to file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you must submit a statement of your views with a full explanation of your reasoning. This statement must be submitted within 30 days from the date of this letter, and must be signed by one of your principal officers. To insure your protest is delivered timely and promptly considered please use the following address:

Internal Revenue Service
Attn: OP:E:EO:T:2
1111 Constitution Avenue N.W.
Washington, DC 20224

You also have the right to a conference in this office after your protest statement is submitted. If you want a conference, please include your request as part of your protest statement.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) provides in part, that a declaratory judgement or decree under this section shall not be issued in any proceedings unless the United States Tax Court, the United States Court of Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to the District Director for your key district. Thereafter, any questions about your federal income tax status should be addressed to your District Director. The appropriate State officials will also be notified of this action in accordance with Section 6104(c) of the Code.

Sincerely,

/s/
Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2

OFFICE CODE SURNAME	INITIATOR	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
INITIALS/DATE							